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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,876	06/13/2002	Andreas Hadler	DNAG 230	2623

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NEW YORK, NY 10103-3198

EXAMINER
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ALIMENTI, SUSAN C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/018,876

Applicant(s)

HADLER ET AL.

Examiner

Susan C. Alimenti

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-41 and 43-46 is/are rejected.
- 7) ☒ Claim(s) 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 30 is objected to because of the following informalities: Regarding the phrase “a projectile core” in line 2, it is unclear which projectile core, i.e. soft core or penetrating core, is being referred to or if a third core is being disclosed.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 24-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitations "the bullet core" and “the penetrator” in line 4. There is insufficient antecedent basis for this limitation in the claim. For purposes of examination the examiner assumes “the bullet core” to mean “a fragmenting soft core” of line 2, and “the penetrator” to mean “a hard penetrating core” also of line 2.

Claims 32-33 recite the limitation "the projectile core" in line 2 of each claim. There is insufficient antecedent basis for this limitation in the claim.

Claims 25-31 and 34-46 are rejected as being dependent upon the subject matter of rejected base claims.

*Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 24-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Wood (US 1,134,797).

Wood discloses the claimed invention as best understood, more specifically an expanding projectile comprising a jacket 3, a fragmenting soft core 2, and a hard penetrating core 4 disposed in front of said soft core 2 as seen in the direction of trajectory. The soft core 2 and penetrating core 4 are enclosed completely by said jacket 3.

The nose of the projectile is considered to be edge 5 of penetrating core 4, wherein regarding claims 26-28 said nose has a recess defined as the hollow conical interior 40 (See Examiner's reference character, Figure 4) of penetrating core 4 and the tip angle is considered to be within the range of 30-90 degrees.

Regarding claims 29-30, cavity 41 adjoins recess 40 and extends no more than 75% of the length of the soft core 2.

Regarding claim 31 and 33, edge 5 is a circular annular surface and is perpendicular to the midline of the projectile.

Regarding claim 32, the shape of cavity 41, which is part of recess 40, is considered to generally conform to the shape of the rear of the projectile and vice versa.

Regarding claims 34-35, Wood shows the nose 5 to be a flat head in Figures 3-4.

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Regarding claims 36-39, the projectile tips 42A, 42B (See Examiner's reference character in Figures 1-2) are considered to have a shape matched to required flight characteristics. The tip is formed from solid cap 1 and further has a rear shaft portion that extends into the penetrating core.

Regarding claim 41, tip 42A is considered to have a sharp edge.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood as applied to claim 24 above, and further in view of Giannoni (US 6,182,574).

Wood discloses the claimed invention as best understood, except the wall thickness is not disclosed to change. Giannoni discloses a projectile in the same field of endeavor, that being expansion projectiles, that teaches the use of a decreasing jacket wall thickness in order to provide more support for the base of the projectile upon impact. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the thickness of the walls of Wood's projectile to decrease toward the front of the projectile to affect dispersion of the contents upon impact.

8. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable Wood as applied to claim 24 above, and further in view of Winter (US 6,148,731).

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Wood discloses the claimed invention, as best understood, except the use of lead free materials in the manufacture of the projectile is not positively stated. Winter discloses an expansion projectile that is made from lead-free materials. Winter explains that a lead core tends to splinter upon impact causing undesired contamination for instance in hunting applications, and the use of non-lead materials could avoid such a situation (Winter, col.1, lns.19-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use non-lead materials when making expanding bullets in order to avoid contamination of lead into the area surrounding the intended target and the target itself.

9. Claims 40 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood in view of winter as applied to claims 24, 36, 38 and 45 above, and further in view of Pejsa (US 4,776,279).

Wood discloses the claimed invention, as best understood, except it is not clear what the tip is made of. Pejsa discloses a projectile in the same field of endeavor, that being expanding or fragmenting projectiles, that teaches using a plastic material to construct the hard penetrating core and tip 30. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Wood's tip out of a plastic material, since it has been held to be within the general skill of a worker in the art to select a known material based upon its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

***Allowable Subject Matter***

10. Claim 42 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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*Response to Arguments*

11. Applicant's arguments with respect to claims 1-41 and 43-46 have been considered but are moot in view of the new grounds of rejection.

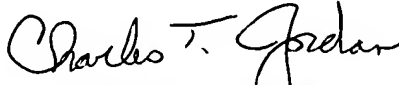
*Conclusion*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA

  
**CHARLES T. JORDAN**  
**SUPERVISORY PATENT EXAMINER**  
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